

FILED ELECTRONICALLY

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
CONSUMER BANKERS ASSOCIATION)	CG Docket No. 02-278:
)	DA 04-3835
Petition for Declaratory Ruling with Respect to)	
Certain Provisions of the Indiana's Revised)	
Statutes and Indiana Administrative Code)	

COMMENTS OF THE MORTGAGE BANKERS ASSOCIATION

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to comment on the Federal Communications Commission's ("the Commission") request for comments resulting from the Consumer Bankers Association's petition for declaratory ruling regarding Indiana's Revised Statutes and Indiana Administrative Code as it relates to interstate telephone calls. MBA supports preemption of Indiana's law that is inconsistent with the Telephone Consumer Protection Act (TCPA).

Currently, Indiana law prohibits a telephone solicitor from making an intrastate or *interstate* sales call to a telephone number that appears on the Do

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership prospects through increased affordability; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters excellence and technical know-how among real estate finance professionals through a wide range of educational programs and technical publications. Its membership of approximately 2,900 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

Not Call list maintained by the state of Indiana.² While Indiana law does have exceptions to its Do Not Call restrictions, they are substantially narrower than the established business relationship rule provided by the Commission.

Under Indiana law, telemarketers are prohibited from making telephone calls to individuals whose names appear on the state Do Not Call list unless such calls: (1) are made in response to an express request of the person called; or (2) are in connection with an existing debt or legally binding contract between the consumer and caller.³ The latter provision does not allow entities that have completed transactions, such as mortgage brokers, to contact recent clients because this provision appears to require an on-going relationship.

While telephone sales calls can be made pursuant to a past inquiry, they must include a “specific grant of authority made by a residential telephone subscriber at a verifiable date and time authorizing a telephone solicitor to make a telephone sales call to the residential telephone subscriber’s residential telephone number.”⁴

Indiana law also does not permit an established business relationship to extend to affiliated companies that the consumer can reasonably expect to be included within the EBR.

In contrast, the TCPA provides a broader exemption to the Do Not Call restrictions for “established business relationships” (EBRs). The TCPA exempts from the Do Not Call prohibitions:

(1) telephone solicitations that are based on a consumer’s past inquiry or application during the three months preceding the call, regarding the party’s products or services;

(2) calls to persons with whom the caller has engaged, within 18 months prior to the call, in a purchase or transaction; and

² Burns Ind. Code Ann. 24-4.7-4 (2004)

³ Id. 24.4.7 – 1-1

⁴ Ind. Admin. Code 11 IAC 1-1-4 (2004).

(3) calls from an affiliate entity that the consumer reasonably would expect to be included in the EBR given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.⁵

The conflict between Indiana and federal Do Not Call statutes creates greater complexity, compliance costs and risk for the mortgage industry and other telemarketers. Effectively, mortgage companies wishing to do business in Indiana would be subject to more stringent overall requirements than those operating in other states. Indiana's restrictive law frustrates the federal objective of creating a uniform national telemarketing rule. As a result, we respectfully support the preemption of Indiana's Statute and Administrative Code to the extent they prohibit interstate telephone solicitations otherwise permissible under the TCPA and its implementing rules.

Respectfully submitted,

A handwritten signature in black ink, reading "Jonathan L. Kempner". The signature is fluid and cursive, with the first name "Jonathan" being more prominent than the last name "Kempner".

Jonathan L. Kempner
President and Chief Executive Officer
Mortgage Bankers Association
1919 Pennsylvania Ave, NW
Washington, DC 20006
(202)557-2700

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⁵ See, 47 CFR § 64.1200(f)(3) (2005).